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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. [redacted] 2

E. PAT KELLY, as Director of the Department of Labor and Industries of the State of Washington; JAY OLINGER, as Supervisor of the Safety Division of Said Department, and HOWELL PARKER, as Deputy of Said Director under the Title, Marine Inspector,

Petitioners,

vs.

STATE OF WASHINGTON on the Relation of FOSS COMPANY, INC., a Corporation; ALLMAN-HUBBLE TUGBOAT COMPANY, INC., a Corporation; BELLINGHAM TUG & BARGE CO., INC., a Corporation, et al.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 552

E. PAT KELLY, as Director of the Department of Labor and Industries of the State of Washington; JAY OLINGER, as Supervisor of the Safety Division of Said Department, and HOWELL PARKER, as Deputy of Said Director under the Title, Marine Inspector,

Petitioners,

vs.

STATE OF WASHINGTON on the Relation of FOSS COMPANY, INC., a Corporation; ALLMAN-HUBBLE TUGBOAT COMPANY, INC., a Corporation; BELLINGHAM TUG & BARGE CO., INC., a Corporation; CAPITAL CITY TUG BOAT CO., INC., a Corporation; CROSBY SAND & GRAVEL COMPANY, INC., a Corporation; JAMES DRAHAM, FOSS LAUNCH & TUG CO., INC., a Corporation; O. D. HOUCHAN, JOHNSON TUG & BARGE COMPANY, INC., a Corporation; JOHN W. and ALLEN McEWAN, Doing Business as McEwan Brothers; MERRILL & RING LUMBER CO., INC., a Corporation; NEMAH RIVER TOWBOAT COMPANY, INC., a Corporation; NORTHWESTERN LOGGING COMPANY, a Corporation; JOHN OLSON and ED. M. OLSON, Doing Business as Olson Tugboat Company; OLYMPIA TOWING COMPANY, INC., a Corporation;

PIONEER TOWING CO., INC., A CORPORATION; PIONEER TRANSPORT COMPANY, A CORPORATION; PUGET SOUND TUG & BARGE CO., INC., A CORPORATION; SCHAFER BROS. LUMBER & SHINGLE COMPANY, A CORPORATION; SHIVELY TOW BOAT COMPANY, INC., A CORPORATION; DELTA V. SMITH, SUNSET TUG & BARGE CO., A CORPORATION; TACOMA TUG & BARGE CO., INC., A CORPORATION; FRED W. THURBER, TRANSIT TOWBOAT COMPANY, INC., A CORPORATION; R. J. ULTICAN TUGBOAT CO., INC., A CORPORATION; WAGNER TUG BOAT COMPANY, A CORPORATION; CLIFFORD W. WATERMAN, DOING BUSINESS AS WATERMAN TOWING CO.; KNAPPTON TOWBOAT CO., A CORPORATION, AND SHAVER TRANSPORT CO., A CORPORATION.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

To the Honorable Charles Evans Hughes, Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

That they were made defendants in an action instituted by the plaintiffs who are the owners of tugboats which operate mainly upon the inland waters of the State of Washington, in an action which sought to prohibit your petitioners from enforcing Chap. 200 of the Laws of 1907 of the State of Washington. (See Apendix "A", p. 33.) The Superior Court for Thurston County dismissed the petition for a writ of prohibition and thereafter appeal was

taken to the Supreme Court of the State of Washington by the plaintiffs in the trial court. The Supreme Court of the State of Washington reversed the judgment of the Superior Court for Thurston County and entered judgment remitting the cause to the lower court with instructions to grant the writ of prohibition.

The State Supreme Court was divided, the majority consisting of five of the Supreme Court justices holding that the State statute, the enforcement of which was being sought to be prohibited by the plaintiffs in the lower court, was invalid. Four justices of the Supreme Court dissented, stating that the decision of the lower court should have been affirmed.

I.

Summary Statement of the Matter Involved.

Chapter 200 of the laws of Washington of 1907 promulgates a comprehensive code for the inspection of every steam boat or other vessel operated by machinery, engaged in carrying passengers for hire or towing for hire, *except vessels which are subject to inspection under the laws of the United States.** This Act also provides, amongst other things, for the licensing of officers employed to operate the boats which fall under the contemplation of the provisions of the Act and likewise vests authority in the Department of Labor and Industries, through its officers, to require adequate personnel to safely operate the vessels which fall within the purview of the provisions of this law.

The thirty-one plaintiffs are owners of one hundred seventy-two tugboats which mainly travel upon the inland waters of the State of Washington, including Puget Sound, Grays Harbor and the Columbia River. Occasionally these

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* Italics herein are used throughout by us for emphasis and do not appear in text.

boats do sail into Canadian waters and likewise travel outside of the inland waters of the State of Washington upon the high seas (R. 34, 41).

One hundred thirty-nine of these vessels are operated by some form or other of internal combustion engines, the remainder are operated by steam (R. 34). The controversy in this action centers about the question of the authority of the State of Washington to enforce, through the Department of Labor and Industries, the provisions of Chap. 200 of the Laws of 1907 with reference to these one hundred thirty-nine boats. Plaintiffs in the Superior Court for Thurston County brought suit asking for a writ of prohibition and in said petition for said writ of prohibition alleged, among other things, that the Director of the Department of Labor and Industries, through his subordinates, was about to institute suit for penalties against these plaintiffs and all other vessel owners who were navigating their vessels, which were not subject to inspection by the United States Steamboat Inspectors, in or upon any waters lying within the boundaries of the State of Washington unless they, among other things,

(a) Submitted their vessels annually, or oftener, for inspection by the duly constituted officers;

(b) Made changes and improvements as required by the Director;

(c) Carried such officers on said vessels as the Director had licensed as masters, pilots and engineers after examination;

(d) Carried such crews as required by the Director to manage each vessel with safety (R. 16, 17, 18).

And plaintiff further alleged that the Director was about to prosecute the plaintiffs for failing to comply with all of the remaining provisions of Chap. 200 of the Laws of 1907.

Plaintiffs alleged in their petition for writ of prohibition, that the acts contemplated to be done by the Director constituted a violation of Sec. 8, Art. 1 of the Constitution of the United States (see p. 22 of the record), and also stated that Chap. 200 of the Laws of 1907 was in direct conflict with the laws of the United States, which provided for inspection and boarding of the said vessels by officers and inspectors of the Board of Navigation and Steamboat Inspection Service and by all Coast Guard officers (R. 22).

The plaintiffs further alleged in the said petition for writ of prohibition that if your petitioners, defendants in the trial before the lower court, were not prohibited from enforcing provisions of Chap. 200 of the Laws of 1907 that they would be deprived of their property without due process of law and would further be deprived of equal protection of the laws within the intent and meaning of the 14th Amendment to the Constitution of the United States (R. 22).

Your petitioners, defendants below, in the action in the Superior Court for Thurston County of the State of Washington interposed a demurrer to the complaint, the trial judge reserved decision on the demurrer and set the matter down for trial upon merits (R. 26).

Thereafter, your petitioners, defendants in the trial court, answered the complaint, alleging in defense that the acts contemplated to be done by them constituted a valid exercise of authority under the provisions of the law in question (R. 27). At the trial the defendants called the officers of the United States Customs Department and the Deputy in charge of the Marine Division of the Federal goverment for the Puget Sound area, who testified as to their duties under the Federal statutes (R. 69-105 Inc.).

The thirty-one appellants in the State Supreme Court and the respondents here are owners of one hundred seventy-two tugboats, thirty-three of these boats are steam vessels,

one hundred thirty-nine are propelled by internal combustion engines and are not steamboats. The issue in this case centers upon the validity of the provisions of Chap. 200 of the Laws of 1907 as applied to these boats which are not in the steamboat category.

It was conceded by all parties to this action that the acts sought to be prohibited have not been attempted to be committed in connection with steamboats which are subject to the jurisdiction of the Federal Government (R. 15-16, 121-122, 123). The boats in question are engaged exclusively in the business of towing (R. 34). The largest part of the towing done by these vessels is purely intra-state work but substantially all of them are capable of doing coastwise service and in some instances do so (R. 41, 42). None of these vessels which we shall hereafter designate for our purpose as motor tugboats, are inspected by the United States Inspectors of Steamboats for the district or districts within which these boats operate (R. 46, 51-52, 71, 72, 73, 77, 81, 86, 87, 88, 89, 92, 101).

It was conceded by the appellants in the State Supreme Court and the respondents here, that, at the time of trial in the lower court, they had interpreted the Federal statutes relating to inspection of vessels, and particularly Sections 362, 364, 391, 392, 404, 405 and 511, Title 46 of U. S. C. A., set out in Appendix "B", to vest no authority in the inspectors of Steamboats to exercise their authority over the motor tugs here in question (R. 46, 47, 78), for the purposes of determining the fitness of the mechanical equipment, engines, boilers, pressure tanks and all other machinery used in the propulsion of the vessel and it was likewise conceded that the United States Inspectors of Hulls and Boilers, who are under the jurisdiction of the United States Department of Commerce, have not the authority to inspect the boats in question under the United States Steamboat Inspection laws (R. 52).

It was further conceded that the United States Coast Guard Service made no attempt to inspect these vessels, sought to be inspected and regulated by your petitioners under the statute here in question, for the purposes of determining the seaworthiness of the hulls of the vessels and the fitness of the mechanical equipment with relation to the safety with which said equipment might be used by the crew (R. 48, 52—See also Dept's Exhibit 5).

These vessels are subject to no regular inspection service of the Federal government to determine the seaworthiness of the vessel, the fitness of its physical structure and the state of physical repair or disrepair of its propelling machinery (R. 54, 55). Likewise there is no Federal agency which exercises any supervision or control over the number of persons who may be transported on these boats or number of men who shall constitute the minimum number required to operate the boat with safety (R. 55, 81-82). There is no authority in the Federal government to require that these boats be operated by licensed officers or that there be any officers in charge of the navigation of these vessels (R. 55, 96).

The Coast Guard of the United States government does, however, board these vessels for the purposes of determining whether they are complying with the general laws relative to navigation which deal with lights, fog horns, whistles, life preservers and fire extinguishers and that they further do investigate to corroborate the names and official numbers of these vessels (R. 61-62).

The American Bureau of Shipping, under the Load Line Act and Load Line Treaty of 1930, through the American Inspection Society does inspect motor vessels for seaworthiness, which are over one hundred fifty tons gross, which depart on a foreign voyage outside of the sheltered area (R. 70). Of the vessels herein involved there are but three

motor tugs which exceed one hundred fifty tons gross (R. 70). The Federal Government, through the Customs Service, does measure these vessels at the time of their construction in order to have the correct measurements for the purposes of classification in connection with registration or enrollment (R. 71). But this investigation has not for its purpose the determination of the seaworthiness of the hull or machinery of any of these respective vessels (R. 72).

There is no Federal law which requires motor tugs to carry life boats (R. 72). The Federal Government does not have the power to require licensed officers on tugboats (R. 78). The Inspector of Hulls of the Bureau of Navigation of the Steamboat Inspection Service of the Department of Commerce is required to examine motor-tugs such as the vessels with which we are concerned in this action, at such time as the said vessel may change its name, but this examination is made solely for the determination of the name and tonnage and said examination is not concerned with the seaworthiness of the hull or fitness of equipment or with the question of whether or not the boat may be operated with safety (R. 81-82).

There are many land-locked lakes in the State of Washington upon which steamboats and other vessels ply. The jurisdiction of the State of Washington, with reference to these boats, is not in question in this suit. Some of the provisions of Chap. 200 of the Laws of 1907 refer specifically and exclusively to said land-locked waters which are under the jurisdiction of the State and do not fall within the jurisdiction of the United States. (See Sec. 8, p. 429, Chap. 200 of the Laws of 1907, set out in Appendix "A" at p. 36.) Also designated as Sec. 9850 of Remington's Revised Statutes of the State of Washington.

Chapter 200 of the Laws of 1907 was meant to apply to all vessels operating upon the land-locked waters of the State of Washington and was also intended to apply to all boats navigating on the waters within the jurisdiction of the United States, *which are not subject to inspection under the laws of the United States.* To a large extent the quintessence of the subject matter of the legal dispute in this case revolves about the question of the application of many of the provisions contained in Chap. 200 of the Laws of 1907 which obviously, if applied to Federal jurisdiction, would be in conflict with Federal legislation, such as provisions dealing with rules for navigation, sections dealing with ferry boats and likewise which have been provided for by Federal enactment on navigable waters under the jurisdiction of the Federal Government.

The provisions contained in these various sections, however, can be given full force and complete efficacy when applied exclusively to the land-locked waters of the State of Washington. Beyond this the final essence of the legal controversy finds itself expressed in the question as to whether or not the Federal Government has completely occupied the field for regulation with reference to these vessels by virtue of having vested the authority in the Coast Guard Service to do the certain limited and specified acts which have heretofore been described.

Counsel for the appellants in the State Supreme Court and respondents here contends that Chap. 200 of the Laws of 1907 is invalid because the Federal Government has already completely occupied the field so as to leave the State no sphere within which its laws may function without conflict with the provisions of the Federal statutes by virtue of which, the powers above described, were vested in the officers of the Coast Guard Service and the Steamboat Inspection Service of the Federal Government.

Before the trial court and in his opening brief, counsel for the appellants in the State Supreme Court argued that Chap. 200 of the Laws of 1907 was intended to apply solely to the land-locked waters of the State of Washington. This position he abandoned in his reply brief (see Reply Brief certified in the record, p. 152), at which point counsel conceded that it was the legislative intention that the statute in question was intended to apply generally to all the navigable water of the State of Washington excepting wherein it was specifically provided that the provisions of the statute were to apply only to the land-locked waters of the State. Counsel further contended in argument both before the Trial Court and the State Supreme Court, that the statute in question constituted interference with the uniformity of the Maritime Law and that said provisions of said statute also constituted a burden upon interstate commerce. There are some four hundred thousand motor boats upon the navigable waters of the nation which are subject to the same limited governmental supervision as the boats to which the provisions of Chap. 200 of the Laws of 1907 have been sought to be applied by the authorities of the State of Washington (R. 125).

II.

Reasons Relied on for the Allowance of the Writ.

Under Sec. 237 "B" of the Judicial Code (U. S. C. A., Title 28, Sec. 344) the judgment of a state Supreme Court holding a state statute invalid because of its repugnancy to the Constitution or laws of the United States may be reviewed by the Supreme Court of the United States by certiorari.

Subdivision 5 (a) of Rule 38 of the Rules of the Supreme Court of the United States states that, "Where a State Court in deciding a Federal question of substance not here-

tofore determined by this Court or has decided it in a way probably not in accordance with the applicable decisions of this Court, a review of the question by a writ of certiorari to the State Supreme Court will be granted."

In its decision in the instant case, the Supreme Court of the State of Washington committed several errors which are reviewable by the United States Supreme Court under and by virtue of provisions of the above cited statute and rule. For the following reasons the writ of certiorari should issue:

(1) The Washington State Supreme Court committed error in holding that because Congress had legislated with respect to vessels and navigation in navigable waters to such an extent as to seemingly cover every situation and condition which Congress has considered to be necessary or advisable to cover, that, therefore, Chap. 200 of the Laws of 1907, which provided for inspection and regulation of vessels not subject to inspection by the Federal Government was invalid for the reason that Congress had intended that these vessels remain unregulated.

In so holding, the Washington State Supreme Court refused to follow the decisions of the United States Supreme Court in the case of *Savage* v. *Jones*, reported at 225, U. S. 501, and the case of *Atchison Railway* v. *The Railway Comm.*, 283 U. S. 380, and a vast multitude of cases cited and discussed in those decisions which hold that Congress may circumscribe its regulations and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress, fairly interpreted, is in conflict with the State law. The Washington State Supreme Court, noted in its decision that vessels in question are not subject to inspection for seaworthiness nor was there a requirement for examination

and licensing of officers, yet it implied from the absence of legislation that it was the Congressional intention that these vessels should not be regulated. In so doing the Court committed error by refusing to follow the United States decisions, above cited, which require a repugnancy or conflict between the State statute and the Federal statute in order that the State statute shall be held to be invalid.

(2) The State Supreme Court committed error in holding that the jurisdiction of the Federal Government with relation to navigation and commerce is exclusive and that the State may not legislate upon matters of local concern even when the Federal Government has not acted excepting only in the case of pilots and pilotage.

This holding is contrary to the decisions of the Supreme Court of the United States which has uniformly held, beginning with the case of *Cooley* v. *The Board of Port Wardens of Philadelphia,* 12 Howard 299, that the State has the sovereign power to enact legislation affecting navigation and commerce in matters of local concern where the Federal Government has not preempted the field by legislating upon the same subjects.

(3) The Supreme Court of the State of Washington erred in holding that the fee provided for in Sec. 26 of the Laws of 1907, p. 438, (Appendix "A" p. 42) to be paid by the owner or master of each vessel for the inspection of said vessel constituted a license fee which was an unlawful tax upon interstate commerce.

This holding is directly contrary to the holding in the case of *Clyde Mallory Lines* v. *The State of Alabama,* 56 Sup. Ct. Rep. 194.

(4) The Supreme Court of the State of Washington erred in holding that the regulations provided for by Chap.

200 of the Laws of 1907 constituted a burden upon navigation and interstate commerce. This holding is contrary to United States Supreme Court decisions in the cases above cited.

(5) The Supreme Court of the State of Washington erred in holding that the acts sought to be done by the petitioners in this case and which are sought to be prohibited by the action of the plaintiffs in the trial court and the appellants in the Supreme Court of the State of Washington and the respondents herein have a tendency to interfere with the uniformity of the Maritime Law, see *Clyde Mallory Lines* v. *Alabama, supra.*

(6) The Supreme Court of the State of Washington erred in holding that Chap. 200 of the Laws of 1907 is invalid if applied to the navigable waters of which the Federal Government has control.

WHEREFORE your petitioners pray that a writ of certiorari issue under the seal of this Honorable Court directed to the Supreme Court of the State of Washington directing that court to certify and send to this Court, for its review and determination on a set day to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket; No. 26052, State of Washington On The Relation of Foss Company, Inc., a corporation, *et al.*, appellants, *vs.* E. Pat Kelly, as Director of the Department of Labor and Industries of the State of Washington; Jay Olinger, as Supervisor of the Safety Division of said Department and Howell Parker as Deputy of said Director under the title, Marine Inspector, respondents, to the end that this cause may be reviewed by this Court as provided by the statutes of the United States and that the judgment herein in the State Supreme Court

be reversed by the Court, and for such further relief as to this Court may seem proper.

Dated November 4, 1936.

G. W. HAMILTON, *Attorney General of the State of Washington;*
W. A. TONER, *Assistant Attorney General of the State of Washington;*
DANIEL BAKER,
Of Counsel,
Attorneys for Petitioners.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 552

E. PAT KELLY AS DIRECTOR OF THE DEPARTMENT OF LABOR AND INDUSTRIES OF THE STATE OF WASHINGTON; JAY OLINGER, AS SUPERVISOR OF THE SAFETY DIVISION OF SAID DEPARTMENT, AND HOWELL PARKER, AS DEPUTY OF SAID DIRECTOR UNDER THE TITLE, MARINE INSPECTOR,

Petitioners,

vs.

STATE OF WASHINGTON ON THE RELATION OF FOSS COMPANY, INC., A CORPORATION, ET AL.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of Court Below.

The opinion of the Washington State Supreme Court is reported in Advance Sheets, 86 Washington Decisions, at page 519, and is likewise set out in the record accompanying the petition at pages 140-146, dissenting opinion (R. 146-150).

Petition for rehearing was filed on the 4th day of August, 1936, within the time fixed by the rules of said court and was denied on September 3, 1936.

II.

Jurisdiction.

(1) The statutory provision which sustains the jurisdiction of this Court is found in Sec. 237, Subdiv. "B" of the Judicial Code (U. S. C. A. Title 28, Sec. 344).

(2) Since we have already set forth in the petition for writ of certiorari reasons upon which we rely for the allowance of the writ, see pages 8, 9 herein, in the interests of brevity said reasons will not be restated here. The cases believed to sustain the said jurisdiction are as follows:

Blodgett v. *Silberman,* 277 U. S. 1;
Long v. *Rockwood,* 277 U. S. 142;
Virginia v. *Imperial Coal Sales Co.,* 293 U. S. 15;
Red Cross Lines v. *Atlantic Fruit Co.,* 264 U. S. 109.

In the cases above cited, state statutes held to be invalid as violative of the Federal Constitution were reviewed by certiorari by this Honorable Court.

III.

Statement of the Case.

The proceedings and subject matter of this cause from its inception until judgment was rendered by the State Supreme Court have been already related in the preceding petition for writ of certiorari (pp. 3-10), and in the interests of brevity we hereby adopt the same and incorporate it as a part of this brief without re-statement.

IV.

Specification of Errors.

(1) The Supreme Court of the State of Washington erred in reversing the judgment of the Superior Court of the State of Washington dismissing the petition for a writ of prohibition.

(2) The Supreme Court of the State of Washington erred in holding that Congress had legislated so completely with reference to all vessels plying the navigable waters of the State of Washington so as to have fully occupied the sphere within which legislation pertaining to said vessels could be enacted and in consequence thereof, Chap. 200 of the Laws of 1907 was invalid as applied to navigable waters over which the Federal Government has jurisdiction.

(3) The Supreme Court of the State of Washington erred in holding that the State of Washington did not have general concurrent power to legislate upon matters pertaining to navigation and commerce of intrinsically local concern upon which the Federal Government had not legislated, the said State court holding the authority of the United States Government, under Art. 1, Sec. 8 of the Federal Constitution, to be exclusive in all matters relating to navigation and commerce irrespective of whether they were of local or national concern, excepting, in the matter of pilotage which constituted an exception wherein the State could legislate in the absence of Congressional enactments.

(4) The Supreme Court of the State of Washington erred in holding that in matters primarily of local concern, silence of Congress in relation to matters affecting in some degree navigation and commerce was to be construed to be

an implication that Congress considered that those matters which had not been made subject to Federal regulation were to be left unlegislated upon and that in consequence thereof, Chap. 200 of the Laws of 1907, the provisions of which were directed to regulation of those matters of local concern which had not been brought within the scope of Federal supervision and control by Congress, was invalid, even though there existed no conflict between the provisions of the State statute and the Federal laws in this field.

(5) The Supreme Court of the State of Washington erred in holding that the provisions of Chap. 200 of the Laws of 1907 constituted an unlawful tax upon interstate commerce.

(6) The Supreme Court of the State of Washington erred in holding that the provisions of Chap. 200 of the Laws of 1907 constituted an unlawful burden upon interstate commerce.

(7) The Supreme Court of the State of Washington erred in holding that the provisions of Chap. 200 of the Laws of 1907 interfered with the uniformity of Maritime Law.

V.

ARGUMENT.

Summary of the Argument.

Although specification of errors numbered two and four constitute two distinct and separate erroneous holdings by the Washington State Supreme Court, they are so closely interwoven and error four flows so inevitably as a consequence of error two that they have been treated together under Point "A" in the Argument. Specification of error one is merely the conclusion which is drawn from the compilation of the specified errors and constitutes said error as a result of the accumulated errors enumerated. Therefore,

no argument on this point is required since the soundness of that allegation of error must stand or fall upon the validity of the arguments directed to the other errors.

Point A. Since the record indisputably reveals that the vessels in question are not subject to inspection by the Federal Government for many purposes of substantial importance with relation to the safety of crew and the people in transit upon the inland waters of the State, under the authority of the case of *Gibbons* v. *Ogden,* 9 Wheat. 1, 6 Law. Ed. 23, the provisions of the State statute which are directed toward regulating matters of local concern must be held to be valid in the absence of Congressional legislation as it is well established that Congress may circumscribe its regulation and occupy a limited field and the intention to supersede the exercise by the State of its authority as to matters not covered by the Federal legislation is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the State. Silence on the part of Congress is not to be interpreted as a prohibition against the State to legislate concerning matters of local interest.

Point B. It has been well settled ever since the case of *Cooley* v. *Board of Port Wardens,* reported in 53 U. S. 298, that the State has concurrent power to regulate generally all matters affecting navigation and commerce in the absence of Federal legislation when the object of the legislation is to govern and control matters of peculiarly local concern.

Point C. The rule is well settled that where fees have been provided to be collected for inspections relating to matters of local concern and which are being regulated under the rule that the State may legislate upon matters of local concern affecting navigation and commerce where Congress has remained silent, that the collection of said fees does not constitute an unlawful tax upon interstate commerce.

Point D. It has been unwaveringly held by this Court that the State has the power to legislate upon matters of local concern where the health and safety of its citizens are involved, in those instances where the Federal Government has not legislated and that even though interstate commerce and navigation is, to some degree, affected, that the State statute is not invalid solely by reason thereof.

Point E. There is no uniform provision of Maritime Law relating to harbor traffic in the several ports of the United States. The matter of regulating harbor traffic with respect to the safety of said traffic in the said harbors is a matter which is peculiarily local in character and in no way interferes with the characteristic uniformity of Maritime Law. The duty of regulating said harbor traffic has been delegated within the circumscribed limits wherein the Federal Government has acted to local inspectors in the several districts.

POINT A.

The Federal Government has not completely occupied the sphere of regulation within which Chapter 200 of the Laws of 1907 is applicable and, therefore, said statute cannot be held to be invalid by the implication of silence unless there is a direct conflict between its terms and the provisions of the Federal Law applicable to this field.

The operation of the tugboats here in question is largely confined to inland waters of the State of Washington (R. 41, 42). The safety with which these vessels are operated, both as to the crew of these respective vessels and to the citizenry of the State of Washington which is in constant flow of travel upon said inland waters, is a matter of immediate and local concern which demands, in the interests of the population of the state generally, regulation of these vessels which are continuously and constantly traversing

its inland waters so that the life, health, peace and property of its citizenry be protected. See:

Steamboat New York v. *Rea*, 59 U. S. 23;
Gibbons v. *Ogden*, 9 Wheat. 1, 6 Law. Ed. 23;
Cooley v. *Bd. of Port Wardens*, 53 U. S. 298;
County of Mobile v. *Kimball*, 102 U. S. 61;
Morgan v. *Louisiana*, 118 U. S. 455;
Wilmington Trans. Co. v. *Cal. Railroad Commission*, 236 U. S. 151;
Ringler v. *Long*, 21 Fed. 2nd 795;
United Dredging Co. v. *City of Los Angeles*, 10 Fed. 2nd 239; Affirmed 14 Fed. 2nd 366;
Chicago, Rock Island & Pacific Rr. v. *Arkansas*, 219 U. S. 453;
Clyde Mallory Lines v. *State of Alabama*, 56 U. S. Sup. Ct. Reptr. 194;
State v. *Dodge*, 104 Atl. Rprts. 5;
Wm. Cushing, et al., v. *Owners of Ship John Frazier, et al.*, 62 U. S. 184;
The Winnebago, 205 U. S. 354;
Old Dominion S. S. Co. v. *Gilmore*, 207 U. S. 398.

"As a general rule, the power of a state over all matters not granted away must be as full in the bays, ports and harbours within her territory, *intra fauces terrae*, as on wharves and shores, or interior soil. And there can be little check on such legislation, beyond the discretion of each State, if we consider the great conservative reserved powers of the states, in their quarantine or health systems, in the regulation of their internal commerce, in their authority over taxation, and, in short every local measure necessary to protect themselves against persons or things dangerous to their peace and their morals."—The License Cases, 46 U. S. 627.

See also:

Sherlock v. *Alling,* 93 U. S. 100;
Cisco v. *Roberts,* 36 N. Y. 292;
Gloucester Ferry Co. v. *Pennsylvania,* 114 U. S. 214;
Burrows v. *Delta Trans. Co.,* 64 N. W. 501 (Supreme Court of the State of Michigan.)

Section Two of Chap. 200 of the Laws of 1907, page 425 (See p. 33 Appendix "A" herein) provides as follows:

> "*Inspection of vessels—Investigation of accidents.*—The commissioner of labor shall annually, or oftener if he has good cause to believe it reasonable, inspect or cause to be inspected, every steam vessel or other vessel operated by machinery engaged in carrying passengers for hire or towing for hire, *except vessels which are subject to inspection under the laws of the United States,* examine carefully her hull, boats and other equipment, examine her engine and boilers, ascertain how long it will be safe to use the same, * * *. (Sec. 9844 Remington's Revised Statutes of the State of Washington.)"

The duties imposed upon the labor commissioner under Chap. 200 of the Laws of 1907 devolved upon the director of Labor and Industries by virtue of the laws of the State of Washington of 1921, Sec. 80, page 43.

Section 3 of Chap. 200 of the Laws of 1907 provides for the inspection of boilers and closely follows the provisions of the Federal Act pertaining to steamboats. See Sec. 392, of U. S. C. A., Title 46, Shipping. Sec. 4418, Revised Statutes, set out in full in the Appendix "B', at page 47.

Section 2 of said statute hereinbefore referred to provides for annual inspection and follows generally the provisions of Section 391 U. S. C. A. Title 46, Shipping. (See Appendix "B", page 46.)

It is conceded by all parties to this action (R. 46) that these vessels are not subject to the annual inspection provided for in the above referred to sections of the Federal law. It is further conceded that Sec. 405 of U. S. C. A. Title 46, Shipping, Revised Statutes 4427 (See Appendix "B" page 49), has no application to motor tugboats herein. See also; *Commonwealth* v. *Breakwater Co.*, 100 N. E. 1034, 214 Mass. 10. There is no provision in the Federal statutes for inspection of these vessels for seaworthiness of structure of the vessel itself nor for the mechanical fitness of the propelling machinery (R. 47).

There is no provision in the Federal law which requires licensing of the officers in command of these motor tugs. No provision is made by Federal law as to the number of men which shall comprise the crew in order to insure safe operation of said boats. No Federal agency makes periodic, thorough, comprehensive inspections of these vessels nor is there any certificate issued by any Federal agency to show that these vessels have been inspected for the purposes of determining the fitness of the structure of the boat generally with reference to the safety with which it may be operated.

The Coast Guard Service of the Department of Commerce has some limited functions to perform with respect to these motor tugs as well as all other vessels. It is conceded that the Coast Guard does not make the inspections provided for by the Sections of the Washington State statute hereinbefore referred to nor do they issue certificates such as provided in Sec. 4 of Chap. 200 of the Laws of 1907, nor do they have authority to provide for licensed officers and to set the number of men to constitute a crew necessary to manage the vessel with safety. (R. 46, 48—also Defendant's Exhibit 5 which is a letter from Capt. R. W. Dempwolf of the United States Coast Guard Service, Commander of the Seattle division.)

Obviously space would not permit a detailed recitation of the volumes of rules, regulations and statutes devoted to the subject of shipping and sailors.

Counsel for the appellant in the Supreme Court of the State of Washington argued that since the said motor tugboats were subject to being boarded by the Coast Guard that this cursory inspection constituted an inspection under the laws of the United States and, therefore, the State statute herein could not be operative upon these vessels. The fallacy of this argument is clearly revealed from an examination of the respective sections of the Federal and State laws.

The inspection required by Sec. 2 of Chap. 200 of the Laws of 1907 is obviously the same type of inspection as set out in the provisions 362, 391, 392 and also 399 of the U. S. C. A. This is plainly apparent when the substance of those sections is compared with that of Sections 2, 3, and 4 of Chap. 200 of the Laws of 1907. The inspection intended by section 2 of said Act did not contemplate the circumscribed and routine police inspection of lights and superficial equipment made by the Coast Guard Service above decks but contemplated rather a rigid, periodical, thorough going over from stem to stern and from deck to hold.

The error of the Supreme Court of the State of Washington in holding that the Federal Government had completely legislated in this field so as to render invalid the provisions of Chap. 200 of the laws of 1907 is so patent and so salient as to require no further dissertation.

The State statute expressly limits the application of its provisions to vessels not subject to inspection by the Federal law, therefore there can be no conflict between the State law and the Federal law express or implied.

That the State has the undoubted power to regulate in this field in the absence of Federal legislation has already been pointed out hereinbefore. In the case of *Savage* v. *Jones, supra,* the United States Supreme Court, at page 533, said:

> "But the intent to supersede the exercise by the State of its police power as to matters not covered by Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state."

This principle has abundant illustration, see *Reid* v. *Colorado,* 187 U. S. 137; *Atchison Railway* v. *Railroad Commission,* 283 U. S. 380; *Hennington* v. *Georgia,* 234 U. S. 280; *Chicago, Milwaukee, St. Paul Railway Co.* v. *Solan,* 169 U. S. 133; *Missouri, Kansas & Texas Railway Co.* v. *Haber,* 169 U. S. 613; also *Pennsylvania Railroad Co.* v. *Hughes,* 191 U. S. 477, *Crossman* v. *Lurman,* 192 U. S. 189 and *Asbell* v. *Kansas,* 209 U. S. 251.

It is submitted that in determining the question of conflict between the provisions of the State and Federal statutes in this sphere for regulation that the Washington State Supreme Court decided a question involving Federal statutes and failed to follow the rule of law established by the United States Supreme Court for determining when a State statute is rendered invalid by reason of transgression against Federal legislation.

In this case the State of Washington found that the failure of Congress to provide regulation for the vessels in question constituted a manifesto by Congress that this field was to be left uncontrolled. This holding is directly in

conflict with the Supreme Court decisions above cited. See also:

Hartford Accident and Indemnity Co. v. *People of the State of Illinois ex rel. McLaughlin, Director of Agriculture,* Reported in Vol. 56 of Advance Sheets of the Sup. Ct. Rprtr. at page 685;

Pacific States Box & Basket Co. v. *White,* 56 Sup. Ct. Rep. 159 (Advance Sheets).

POINT B.

The State has Concurrent jurisdiction with the Federal Government to regulate navigation and commerce in matters primarily of local concern, in the absence of Federal Legislation covering the same subject matter.

The power of the State to exercise supervision and control over navigable waters and the vessels plying thereon, within its jurisdiction, when the regulation is directed to matters primarily of local concern, was established in the case of *Gibbons* v. *Ogden,* 9 Wheat. 1, 6 L. Ed. 23.

Chief Justice Marshall observed that this power had its origin in the police power which resided in all sovereignties to regulate in matters concerning the peace, safety, health and morals of its citizens.

In the case of *Cooley* v. *Board of Wardens of the Port of Philadelphia, supra,* it was determined that this power stemmed from the authority of the State to legislate on matters of navigation and commerce and did not solely originate in the police power of the sovereign. The rule laid down in these cases has never been departed from. See:

Steamboat New York v. *Rea,* 59 U. S. 223;
Gilman v. *Philadelphia,* 70 U. S. 713;
Cornell Steamboat Co. v. *Sohmer,* 235 U. S. 549;
Morgan v. *Louisiana,* 118 U. S. 455;

Packet v. *Catlettsburg*, 105 U. S. 559;
Sherlock v. *Alling*, 93 U. S. 100;
Vandalia Railroad Co. v. *Public Serv. Comm. of Indiana*, 242 U. S. 255;
The License Cases, 46 U. S. 627;
Minnesota Rate Cases, 230 U. S. 400; and
Stewart & Co. v. *Rivara*, 274 U. S. 614.

See also:

Clyde Mallory Lines v. *Alabama*, 56 Sup. Ct. Rep. 194;
Missouri Pac. v. *Larabee Flour Mills*, 211 U. S. 612; and
Wm. Cushing, et al., v. *Owners of the Ship John Frazier*, 62 U. S. 184.

It is interesting to note that the Supreme Court of the State of Washington recognized this concurrent jurisdiction in the cases of *The State* v. *Oregon-Washington Rr. & Nav. Co.*, 128 W. 38; and *State* v. *Ames*, 47 W. 328.

Consideration of the above citations and the rule enunciated therein can leave no doubt that the Supreme Court of the State of Washington clearly committed error in holding that the jurisdiction over navigation and commerce vested in the United States Government under Art. 1, Sec. 8 of the United States Constitution, is exclusive, and that the State may legislate only upon matters of pilotage in the realm of navigation and commerce even though the matters sought to be regulated are those of local concern.

Point C.

A reasonable fee levied by the State authorities to defray costs of inspection of vessels in connection with the regulation of harbor traffic does not constitute an unlawful burden upon interstate commerce.

This principle was established in the case of *Cooley* v. *Bd. of Port Wardens of Phila.*, 53 U. S. 298. The number

of cases in which this Honorable Court has followed this decision is legion. See:

Pittsburgh Southern Coal Co. v. *Louisiana,* 156 U. S. 590;

Packet Co. v. *Catlettsburg,* 105 U. S. 559;

Transportation Co. v. *Parkersburg,* 107 U. S. 691;

Morgan's Steamship Co. v. *Louisiana Bd. of Health,* 118 U. S. 455;

Gloucester Ferry Co. v. *Pennsylvania,* 14 U. S. 214;

Clyde Mallory Lines v. *State of Alabama ex rel. State Docks Comm.,* 56 Sup. Ct. Rep. page 194.

The fee prescribed in Sec. 26 of Chap. 200 of the Laws of 1907 (see Appendix "A" page 42), is obviously by its terms, not a fee for license, but is rather a fee for inspection. The fee is paid for a police service in connection with the regulation of the harbor traffic. The propriety of an exaction of this character levied under the authority of a State statute is fully established by the cases which have been cited above.

The conclusion that the State Supreme Court erred in characterizing the fee provided for by the State act as a license fee and as an unlawful burden upon interstate commerce is inescapable. Nowhere does Chap. 200 of the Laws of 1907 provide for the licensing of any of these vessels.

POINT D.

State regulations of harbor traffic, although they incidentally affect commerce, interstate or foreign, are of local concern, and so long as they are not made the subject of regulation by Congress they are not forbidden, as an unlawful burden upon interstate commerce.

The power so to regulate in the asbence of Federal statutes governing these matters of local concern, residing in the State as a legal power having its source in the sover-

eignty of the citizenry of that State, was recognized by this Honorable Court in the case of *Gibbons* v. *Ogden*, 9 Wheat. 1, 6 L. Ed. 23, and has never been departed from.

That this power does not when exercised, constitute an unlawful burden upon interstate commerce or unlawfully interfere with the jurisdiction of the Federal Government over navigation is established by the following cases:

The License Cases, 46 U. S. 627;
Sherlock v. *Alling*, 93 U. S. 100;
Gilman v. *Philadelphia*, 70 U. S. 713; see also,
Minnesota Rate Cases, 230 U. S. 400;
Hennington v. *Georgia*, 163 U. S. 299;
Atlantic Coast Lines v. *Georgia*, 234 U. S. 280;
Clyde Mallory Lines v. *State of Alabama*, 56 Sup. Ct. Rep. 194;
Steamboat New York v. *Rea*, 59 U. S. 223.

A decision of the Supreme Court of the State of Michigan which dealt with a situation closely analogous in some respects to the factual circumstances in this case was that of *Burrows* v. *Delta Trans. Co.*, 64 N. W. 501, which, while being of no binding effect upon this Court under the *Stare Decisis* doctrine, yet is of a distinct interest. A Michigan statute providing for fire screens to be placed over smoke stacks on vessels plying the rivers of the State even though they be engaged in interstate or foreign commerce, was held to be valid by said Supreme Court. The case of *Smith* v. *Alabama*, 124 U. S. 465; *Nashville, Chattanooga & St. Louis Ry. Co.* v. *Alabama*, 128 U. S. 96, and other United States Supreme Court decisions therein set out were cited as authority for sustaining the validity of the State statute. See also, *Leisy* v. *Hardin*, 135 U. S. 108.

The rule of law enunciated in these cases definitely establishes the error of the State Supreme Court in holding that

the provisions of Chap. 200 of the Laws of 1907 constituted a burden upon interstate commerce.

POINT E.

Chapter 200 of the Laws of 1907 does not interfere with the uniformity of maritime law.

Congress itself has recognized that the matter of regulating the various vessels in the different harbors of the United States constitutes a problem which is essentially local in character and therefore vested broad authority in the local steamboat inspectors. (See Sec. 4438 of Revised Statutes, Title 52, Regulation of Steam Vessels; see Appendix "B", page 51.)

This provision applies only to steam vessels. The Department of Commerce was likewise given power to promulgate rules and regulations providing for the licensing of officers on certain boats, the number of men constituting the crew to be required, the qualifications for engineers, masters and pilots for boats of different tonnage. All these matters are provided for in the rules and regulations of the Board of Supervising Inspectors, and said authority was delegated to the local inspectors who, under the rules and under Sec. 4463 of the United States Rev. Statutes, Title 63, have the authority to prescribe the number of licensed officers as well as the number of men in the crew which a boat is required to carry, in each of the several harbors of the United States and who exercise broad general supervisory powers with relation to these boats.

Evidently Congress took notice of the fact that local conditions of navigation were best known by the man detailed to enforce the statutes in his particular locality and he was best positioned to know the number of licensed officers as well as the crew required to operate a boat in those waters with safety. Two boats of the same size may

well require different sized crews to operate them because of inherent differences in construction. All these factors not only require, but demand, that the discretion of the local inspector in charge be exercised in dealing therewith.

These matters are purely of local concern. The matter of making the same rules and regulations pertaining to the vessels with which we are concerned in this action is similarly a matter of local concern.

Unquestionably, uniformity in the matter of regulating harbor traffic in the several harbors of the United States is a myth. See:

The License Cases, 46 U. S. 627;
Cooley v. *Bd. of Port Wardens*, 53 U. S. 298; and
Gibbons v. *Ogden*, 9 Wheat. 1, 6 Law. Ed. 23.

From *The License Cases*, 46 U. S. 627, we cite as follows from page 605:

> "Owing to situation and climate, every port and place where commerce enters a state must have peculiarities in its regulations; and these it would be exceedingly difficult for Congress to make; nor could it depute the power to corporations as the states do. The difficulties standing in the way of Congress are fast increasing with the increase of commerce and the places where it is carried on * * *. I admit that this condition of things does not settle the question of contested power; but it satisfactorily shows that Congress can not do what the states have done, are doing and must continue to do from a controlling necessity even should the exclusive power in Congress be maintained by our decisions."

See also language on page 624 of the above case; see also:

Hennington v. *Georgia*, 163 U. S. 299;
Atlantic Coast Lines v. *Georgia*, 234 U. S. 280;
New York, New Haven, Hartford Rr. Co. v. *New York*, 165 U. S. 628;

Minnesota Rate Cases, 230 U. S. 352; and also *Chicago, Rock Island & Pac. Railway Co.* v. *Arkansas*, 219 U. S. 453.

It was construed in the case of *Gibbons* v. *Ogden, supra*, that the power of the Federal Government to regulate navigation was derived from Sec. 8 of Art. 1 of the United States Constitution. The same rule, therefore, which governs the matter of uniformity with relation to interstate commerce, discussed in the cases above cited, must also apply to the matter of determining whether or not an interference exists with the uniformity of rules and regulations of the Federal Government relating to navigation.

Under the reasoning of the foregoing cases it must be plainly patent that the Supreme Court of the State of Washington failed to follow the decisions of this Honorable Court in holding that the provisions of Chap. 200 of the Laws of 1907 had a tendency to interfere with the uniformity of the Federal Maritime Law in this particular sphere.

Conclusion.

It is, therefore, respectfully submitted that the writ of certiorari should issue and that this Court should review the decision of the Supreme Court of the State of Washington and finally reverse it.

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Of Counsel,
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APPENDIX "A".

CHAPTER II.

Regulation of Steam Vessels, etc.

SEC. 9843. *Commissioner of Labor to Enforce.*—The commissioner of labor shall be charged with the administration of the provisions of this act, shall employ the necessary inspectors to enable him to carry said provisions into effect, and shall exercise supervision over them in the performance of their duties. (Chap. 200, L. '07, p. 425, Sec. 1.)

SEC. 9844. *Inspection of Vessels—Investigation of Accidents.*—The commissioner of labor shall annually, or oftener if he has good cause to believe it reasonable, inspect, or cause to be inspected, every steam vessel or other vessel operated by machinery engaged in carrying passengers for hire or towing for hire, *except vessels which are subject to inspection under the laws of the United States,* examine carefully her hull, boats and other equipment, examine her engine and boilers, ascertain how long it will be safe to use the same, determine the pressure of steam to be allowed and so regulate the fusible plugs, safety valves and steam-cocks as to insure safety, and he may require such changes, repairs and improvements to be adopted and used as he may deem expedient for the contemplated route. He shall also fix the number of passengers that may be transported. He shall also, whenever he deems it expedient, visit any vessel licensed under this act and examine into her condition for the purpose of ascertaining whether or not any party thereon having a certificate from him has conformed to and obeyed the conditions of such certificate and the provisions of this act. The owner, master, pilot, captain or engineer of such vessel shall answer all reasonable questions, and shall give all the information in his or their power, in regard to said vessel, her machinery and the manner of managing the same.

In case of damage by fire or explosion or by means of an electrical apparatus, he may investigate the cause thereof, and if found by him to have been occasioned by

a violation of any of the provisions of this act, or of the orders, regulations and requirements issued by him, he shall so certify to the prosecuting attorney of the county where such violation occurred, together with the names of the persons guilty thereof and of the witnesses. (L. '07, p. 425, Sec. 2.)

SEC. 9845. *Boiler Tests—Inspection of Launches.*—The commissioner shall also test the boilers of all steam vessels, before the same shall be used, and at least once in every year thereafter. In subjecting to the hydrostatic test, boilers called and usually known under the designation of high pressure boilers, the hydrostatic pressure applied must be in proportion of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the steam pressure allowed. And in subjecting to the hydrostatic test, that class of boilers usually designated and known as low pressure boilers, the commissioner shall allow as the working power of each new boiler, a pressure of only three-fourths the number of pounds to the square inch, to which it shall have been subjected by the hydrostatic test, and found to be sufficient therefor; but should said commissioner be of the opinion that such boiler, by reason of its construction or material will not safely allow so high a working pressure he may, for reasons specifically stated in his certificate, fix the working pressure of such boiler at less than three-fourths of said test pressure; and no boiler or pipe, or any of the connections therewith, shall be approved, which is made in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use or other cause. In addition to the hydrostatic test as herein provided, the commissioner may cause a hammer test to be made and an internal examination of such boiler or boilers so tested, whenever deemed necessary. Any boiler having been in use ten years or more may be drilled at the bottom of shell or boiler, and also at such other points as the inspectors may direct to determine the thickness of such material at those points, and the general condition of such boiler or boilers at the time of inspection and the steam pressure allowed shall be determined by such ascertained thickness and gen-

eral condition of the boiler. He shall also see that all connections to the said boiler or engines are of suitable material, size and construction; and that the boiler, machinery and appurtenances are such as may be employed with safety in the service to be performed. He shall also satisfy himself that the safety valves are of suitable dimensions and that the weights of the same are properly adjusted, so as to allow no greater pressure than the maximum amount prescribed by him; and that there is a sufficient number of gauge cocks, properly attached to the boiler, so as to indicate the quantity of water therein; and suitable steam gauges to correctly show the amount of steam carried; and as to any other matter connected with such steam vessel or the machinery thereof, that to said commissioner shall seem necessary to the safety of her passengers and crew. And he shall make such inspection, examination and test of naphtha launches and electric launches and their apparatus and machinery, as will enable him to determine whether they can be safely used in navigation. (L. '07, p. 426, Sec. 3.)

SEC. 9846. *Certificate of Inspection.*—The commissioner, if satisfied that such vessel is in all respects safe and conforms to the requirements of this act, shall make and subscribe duplicate certificates, setting forth the age of the vessel, the date of inspection, the name of the vessel, the name of the owner, the master, the number of licensed officers and crew which he deems necessary to manage the vessel with safety, the number of boats and life-preservers required, and the number of passengers that she can safely carry, and if a steam vessel, the age of the boiler, and the pressure of steam she is authorized to carry. One of such certificates shall be kept posted in some conspicuous place on the vessel to be designated by the commissioner in the certificate and the other copy shall be kept by the commissioner and by him recorded in a book to be kept for that purpose. If the commissioner refuses to grant a certificate of approval, he shall make a statement in writing, giving his reasons for such refusal, and deliver the same to the owner or master of the vessel. (L. '07, p. 427, Sec. 4.)

SEC. 9847. *Number of Passengers.*—No greater number of passengers shall be transported upon any licensed steam vessel or other vessel included within the provisions of this act, than the number allowed in the certificate of such vessel, under a penalty of ten dollars, to be paid by the master for each passenger in excess of the allowed number, unless special permission is first obtained from the commissioner under such precautions as he deems expedient. (L. '07, p. 428, Sec. 5.)

SEC. 9848. *Protection of Woodwork Against Fire.*—All steamboats and other vessels to which this act is applicable, shall hereafter be so constructed that the woodwork about the boilers, chimneys, fireboxes, cookhouses, stove and steam pipes, or any machinery or apparatus involving danger of fire, where such woodwork is exposed to ignition, shall be so shielded by some incombustible material, that the air may circulate freely between such material and woodwork or other ignitible substances, and before granting a certificate of inspection, the commissioner shall require that all other necessary provisions be made throughout such vessel, as he may judge expedient to guard against loss or damage by fire. (L. '07, p. 428, Sec. 6.)

SEC. 9849. *Stairways and Gangways.*—Every vessel engaged in carrying passengers, shall be provided with permanent stairways and other sufficient means convenient for passing from one deck to the other, with gangways large enough to allow persons freely to pass, which shall be open fore and aft of the length of the vessel, and to and along the guards; and whoever obstructs such gangways by freight or otherwise shall forfeit fifty dollars to the state of Washington for every such violation. (L. '07, p. 428, Sec. 7.)

SEC. 9850. *Rules for Navigation of Vessels.*—From and after the passage of this act, the following rules shall be observed in navigating all steam vessels when under steam, and all boats propelled by machinery on *the waters within the jurisdiction of the state, excepting the waters which are under the jurisdiction of the United States:* * * * (L. '07, p. 429, Sec. 8.)

In view of the restrictive language used in the first paragraph of this section, the eighteen subdivisions have been omitted in the interests of brevity.

SEC. 9851. *Lights.*—The master of every steamboat or vessel propelled by machinery when navigating between sunset and sunrise, shall cause the same to carry the following lights:

(1) At the foremast head, a bright light of such a character as to be visible on a dark night, with a clear atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and to be fixed so as to throw the light ten points on each side of the vessel from right ahead to two points abaft the beam on either side.

(2) On the starboard side a green light of such a character as to be visible on a dark night, with a clear atmosphere at a distance of at least two miles; and be so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side.

(3) On the port side a red light of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of ten points of the compass, and so fixed as to throw the light from right ahead to two points abaft the beam on the port side. The green and red lights shall be fitted with inboard screens, projecting at least three feet forward from the lights, so far as to prevent them from being seen across the bow.

(4) The master of every vessel other than a steamboat anchored in the night-time shall cause her peak to be lowered and a good and sufficient light to be thrown from her taffrail in some part of her rigging and at least twenty feet above her deck. In the case of small vessels, the com-

missioner may make specific rules for lights different from the foregoing. (L. '07, p. 431, Sec. 9.)

* * * * * * *

SEC. 9854. *Life-Preservers—Buckets and Axes.*—Every steam vessel or vessel propelled by machinery used in the transportation of passengers for hire, shall have a life-preserver or life-float for each passenger she is allowed to carry and for each member of her crew. At least one-half thereof shall be life-preservers of the sort prescribed by the supervising inspector appointed under this act, and the other half or part thereof may be life-floats, to be constructed of dry pine plank, four feet long, two inches thick and twelve inches wide, with lines properly attached in such manner as to be convenient for use; and it shall be the duty of the commissioner to satisfactorily ascertain that every life-preserver and such life-floats are as herein required. Such life-preservers and life-floats shall be kept in convenient accessible places in such vessel in readiness for immediate use in case of accident, and the places where the same are to be kept shall be designated in the commissioner's certificate, and also pointed out by printed notices posted in such places as the commissioner directs. Every such vessel shall carry in convenient places, at least ten buckets filled with water, with dip lines attached, and three axes in good condition, but the inspectors may, if they deem it necessary or proper, require a larger, or in case of very small vessels, permit a smaller number of buckets and axes. (L. '07, p. 433, Sec. 12.)

SEC. 9855. *Obstruction of Safety Valves, etc., Prohibited —Penalty.*—Whoever intentionally loads or obstructs, or causes to be loaded or obstructed, in any way, the safety valve of the boiler, or employs any other means or device whereby the boiler may be subjected to a greater pressure than the amount allowed by the commissioner's certificate, or intentionally deranges or hinders the operation of any machinery or device employed to denote the state of the water or steam in any boiler, or to give warning of any approaching danger, or intentionally permits the water to

fall below the prescribed low water limit of the boiler, shall forfeit to the state of Washington the sum of five hundred dollars for each violation. (L. '07, p. 434, Sec. 13.)

SEC. 9856. *Examination for License as Master, Pilot and Engineer.*—Every person employed as master, pilot or engineer on board of a steam vessel or a vessel propelled by machinery, carrying passengers for hire or towing for hire, shall be examined by the commissioner as to his qualifications, and if satisfied therewith he shall grant him a license for a term of one year for such boat, boats or class of boats as said commissioner may specify in such license. In a proper case, the license may permit and specify that the master may act as pilot, and in case of small vessels also as engineer and pilot. The license shall be framed under glass, and posted in some conspicuous place on the vessel on which he may act. Whoever acts as master, pilot or engineer, without having first received such license, or upon a boat or class of boats not specified in his license, shall be liable to a penalty of fifty dollars for each day that he so acts, except as in this act otherwise specified, and such license may be revoked by the commissioner for intemperance, incompetency or willful violation of duty. (L. '07, p. 434, Sec. 14.)

SEC. 9857. *Standard Quality of Oil, to Be Used in Lights.*—No licensed vessel carrying passengers for hire shall be allowed to use in lamps, lantern or other lights on such vessels, any oil which will not stand a fire test of at least three hundred degrees Fahrenheit. (L. '07, p. 434, Sec. 15.)

SEC. 9858. *Name and Home Port on Stern.*—Every vessel subject to the provisions of this act, shall have her name and the port to which she belongs painted on her stern on a black background in white, yellow or gilt letters, or on a white background in black, yellow or gilt letters of not less than three inches in length. If any vessel, which is subject to the provisions of this act, shall be found without having her name, and the name of the port to which she belongs so painted, the owner or owners shall be liable to a penalty of fifty dollars to the state of Washington.

The commissioner may, however, in the case of small vessels, permit such name to be placed elsewhere and in letters of less length, the permission, the place of the name and length of letters to be stated in a certificate to be given to the master, who shall exhibit the same whenever requested. (L. '07, p. 435, Sec. 16.)

SEC. 9859. *Landing Passengers in Small Boats.*—Small boats containing passengers may be landed from or drawn to a steamboat by means of a line hauled in by hand, but in no case shall the line be attached to or hauled in by the machinery of any vessel. No passenger shall be put or suffered to go into any such small boat for the purpose of being landed until such small boats shall be completely afloat and wholly disengaged from the vessel, except held by a painter. A good and sufficient pair of oars suitable for the purpose shall be kept in such small boat. In landing or receiving any passenger in the night-time, there shall be a signal from the small boat at the shore by means of a horn or trumpet, to enable those having charge on board the vessel to determine when the small boat, having landed or received her passengers, is ready to leave the shore. (L. '07, p. 435, Sec. 17.)

SEC. 9860. *Same—Engines to be Stopped.*—While landing or receiving passengers the engine of the vessel shall not be put in motion except:

(1) To give sufficient force to carry the small boat to the shore, or,

(2) To keep the vessel in proper direction and to prevent her from drifting or being driven on shore; but in no case shall it be put in motion while passengers are being transferred from such vessel into a small boat for the purpose of being landed. (L. '07, p. 435, Sec. 18.)

SEC. 9861. *Regulation as to Carrying Combustibles.*—No loose hay, loose cotton or loose hemp, camphene, nitroglycerine, naphtha, benzine, benzole, coal oil, crude petroleum or other like explosive burning fluids or dangerous articles, shall be carried as freight or used in stoves on

any steamer or vessel licensed to carry passengers under this act; * * * (L. '07, p. 436, Sec. 20.)

SEC. 9863. *Penalty.*—Every master of a steamboat or vessel who shall violate any of the preceding sections of this act shall, for every such violation, forfeit to the state of Washington the sum of two hundred and fifty dollars, unless a different penalty is prescribed. (L. '07, p. 436, Sec. 21.)

SEC. 9864. *Liability of Owner of Vessel for Misconduct of Master.*—The owner of every steamboat or vessel shall be responsible for the good conduct of the master employed by him, and if any penalty incurred by such master is not paid by him and cannot be collected from him by due course of law, it may be recovered of the owner or owners, jointly or severally, of the steamboat or vessel in whose employ he was at the time of the incurring of such penalty, in the same manner as if such owner or owners were sureties of such master. (L. '07, p. 436, Sec. 22.)

SEC. 9865. *Copy of Act Shall be Posted.*—The master of every vessel shall keep a copy of the preceding sections of this act posted in a conspicuous place on such vessel for the inspection of all persons on board thereof. Every master violating the provisions of this section shall forfeit to the state of Washington, twenty-five dollars, and the additional sum of twenty-five dollars for each month such violation continues. (L. '07, p. 437, Sec. 23.)

SEC. 9866. *Commissioner's Report to Governor.*—The commissioner shall on or before the 1st day of January in each year, make a verified report to the governor containing a detailed statement of the names and number of vessels examined and licensed, the names and number of vessels to which licenses were refused and stating the reasons for the refusal, the names and number of persons examined and licensed, the names and number to whom licenses were refused and stating the reasons therefor, and may include in such report any other information he may deem desirable. (L. '07, p. 437, Sec. 24.)

SEC. 9867. *Penalty for Noncompliance With Act—Renewal of Certificates, etc.—Requirements of Launches Navi-*

gating the Straits.—All steam vessels, naphtha, gasoline and electric launches, or any craft propelled by machinery, carrying passengers for hire, or towing for hire must comply with all the terms and provisions of this act, and with all orders, regulations and requirements of the commissioner except that any such vessel not propelled by steam, or when not under steam, is exempt from the provisions in regard to the blowing of whistles. If any such vessel is navigated without complying therewith, except as herein stated, or without the requisite certificates of the commissioner, the owners and masters shall forfeit to the state of Washington the penalties prescribed in this act, and the vessel so navigated shall also be liable therefor, and may be attached and proceeded against in any court having jurisdiction. But if any such vessel is deprived of the services of any licensed officer, without the consent, fault or collusion of the master, owner or any person interested in the vessel, the deficiency may be temporarily supplied, until a licensed officer can be obtained. If the owner or master of any vessel shall at least twenty days before the expiration of his certificate notify the commissioner of such expiration and request a new inspection and certificate, the certificate then expiring shall continue in force until an inspection is made and such owners and masters are not liable for any of the penalties provided in this act on account of navigating said vessel, without such new certificate. No launch under ten tons carrying passengers shall navigate the waters of the straits of Juan de Fuca, unless provided with a boat of sufficient size to accommodate said passengers and be under the management of a person holding a United States license for steam vessels. (L. '07, p. 437, Sec. 25.)

SEC. 9868. *Fees.*—For each inspection provided for in sections 9844 and 9845 the owner or master of each vessel shall pay the commissioner of labor an inspection fee, which shall not be less than five dollars, nor more than twenty dollars, to be fixed by the commissioner of labor with reference to the size of the vessel inspected. For each license issued under section 9860 of this act the person so licensed shall pay to the commissioner of labor the sum of five dol-

lars. All of the fees received from this source shall be accounted for by the commissioner of labor to the state treasurer, and credited to the general fund. (L. '07, p. 438, Sec. 26.)

SEC. 9869. *Compensation of Inspectors.*—The inspectors provided for in this act shall receive seven dollars per diem for the time actually engaged in making the inspections and examinations provided for herein, and shall be paid necessary traveling expenses, when making such inspections and conducting such examinations at other than the domicile of said inspectors. (L. '07, p. 438, Sec. 27.)

SEC. 9870. *Authority of Inspectors.*—Any inspector duly employed by the commissioner of labor for the execution of any of the provisions of this act, shall be deemed to be a deputy of said commissioner for the purposes hereof, and may perform any act and exercise any authority herein prescribed for the commissioner of labor. (L. '07, p. 438, Sec. 28.)

APPENDIX "B".

TITLE 46—SHIPPING.

U. S. C. A. CHAPTER 14.

Vessels Subject to Inspection and Regulation.

SEC. 362. *Vessels Subject to Provisions of Chapter; Reciprocal Acceptance of Foreign Certificates of Inspection; Fees.*—All steam vessels navigating any waters of the United States which are common highways of commerce or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled in whole or in part by steam for navigating canals, shall be subject to the provisions of this and the following chapter and sections 214 and 215.

And all foreign private steam vessels carrying passengers from any port of the United States to any other place or country shall be subject to the provisions of sections 391, 392, 399 to 402, inclusive, 463 to 466 inclusive, 472, 475, 481, 494, 495, 497, and 498, and shall be liable to visitation and inspection by the proper officer, in any of the ports of the United States, respecting any of the provisions of the sections aforesaid: *Provided, however,* That when such foreign passenger steamers belong to countries having inspection laws approximating those of the United States, and having unexpired certificates of inspection issued by the proper authorities in the respective countries to which they belong, they shall be subject to no other inspection than necessary to satisfy the local inspectors that the condition of the vessel, her boilers, and life-saving equipments are as stated in the current certificate of inspection; but no such certificate of inspection shall be accepted as evidence of lawful inspection except when presented by steam vessels of other countries which have by their laws accorded to the steam vessels of the United States visiting such countries the same privilege accorded to the steam vessels of such countries visiting the United States; it being further provided that there shall be collected and paid into the Treasury of the United States the same fees for the

inspection of foreign passenger steamers carrying passengers from the United States that any foreign nation shall charge the merchant vessels of the United States trading to the ports of such nationality; it being further provided that the Secretary of Commerce shall have the power to waive at any time the collection of such fees upon due notice of the proper authorities of any country concerned that the collection of fees for the inspection of American steam merchant vessels has been discontinued.

It is further provided that the Secretary of Commerce may, in his discretion, permit any foreign passenger steamer coming within the provisions of this section whose foreign certificate of inspection shall have expired at sea since last leaving the country to which said vessel belongs, or while said vessel shall have been in a port of the United States, to sail upon her regular route without undergoing any further inspection than would have been required had said foreign certificate of inspection been in force: *Provided,* however, That such discretion shall be exercised only with respect of vessels operated upon regularly established lines, and in cases where such foreign passenger steamers will be regularly inspected by the authorities of her home government before her next return to a port of the United States. (R. S. Sec. 4400; Aug. 7, 1882, c. 441, Sec. 1, 22 Stat. 346; Mar. 1, 1895, c. 146, Sec. 1, 28 Stat. 699; Feb. 15, 1902, c. 23, 32 Stat. 34; Mar. 17, 1906, c. 955, Sec. 1, 34 Stat. 68; Mar. 4, 1913, c. 141, *37 Stat. 736.)

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Title 46—Shipping.

Sec. 364. *Vessels Navigating Coastwise and on Great Lakes.*—All coastwise seagoing vessels, and vessels navigating the Great Lakes, shall be subject to the navigation laws of the United States, when navigating within the jurisdiction thereof; and all vessels, propelled in whole or in part by steam, and navigating as aforesaid, shall be subject to all the rules and regulations established in pur-

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* "Sec. 1" should be inserted after "141."

suance of law for the government of steam vessels in passing, as provided by this and the following chapter; and every coastwise seagoing steam vessel subject to the navigation laws of the United States, and to the rules and regulations aforesaid, not sailing under register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the inspectors of steamboats. (R. S. Sec. 4401.)

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Mode, Manner, and Extent of Inspection: Certificates: Records.

SEC. 391. *Hulls and Equipments; Exemption of Vessels; Enforcement of Requirements.*—The local inspectors shall, once in every year, at least, carefully inspect the hull of each steam vessel within their respective districts, and shall satisfy themselves that every such vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for passengers and the crew, and is in a condition to warrant the belief that she may be used in navigation as a steamer, with safety to life, and that all the requirements of law in regard to fires, boats, pumps, hose, life preservers, floats, anchors, cables, and other things are faithfully complied with; and if they deem it expedient they may direct the vessel to put in motion, and may adopt any other suitable means to test her sufficiency and that of her equipment. The local inspectors shall, once in every year, at least, carefully inspect the hull of each sail vessel of over seven hundred tons carrying passengers for hire and all other vessels and barges of over one hundred tons burden carrying passengers for hire within their respective districts, and shall satisfy themselves that every such vessel so submitted to their inspection is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in condition to warrant the belief that she may be used in navigation with safety to life: Provided, That vessels while laid up and dismantled and out of commission may, by regulations

established by the board of supervising inspectors, with the approval of the Secretary of Commerce, be exempted from any or all inspection under this section and sections 392, 404, and 405. Whenever any inspector or assistant inspector shall, in the performance of his duty, find on board any vessel subject to the provisions of this and the following chapter, as part of the required equipment thereof, any equipment, machinery, apparatus, or appliances not conforming to the requirements of law, he shall require the same to be placed in proper condition by the owner or master of the said vessel, if possible; and if said inspector or assistant inspector shall find on board any such vessel any life preservers or fire hose so defective as to be incapable of repair, he shall require that the same be destroyed in his presence by such owner or master. And in any of the foregoing cases local inspectors by whom or under whose supervision said vessel is then being inspected shall have power to enforce the foregoing requirements by revoking the certificate of the said vessel, and by refusing to issue a new certificate to the said vessel until the said requirements shall have been fully complied with or until such action of the local inspectors shall have been reversed, modified, or set aside by the supervising inspector of the district on proper appeal by the owner or master of said vessel, which appeal shall be made to the said supervising inspector within ten days after the final action as aforesaid by the local inspectors; and upon such appeal, duly made, the supervising inspector shall have power to affirm, modify, or set aside such action by the local inspectors. (R. S. Sec. 4417; Dec. 21, 1898, c. 29, Sec. 4, 30 Stat. 765; Mar. 3, 1905, c. 1454, Sec. 1, 33 Stat. 1023; Mar. 4, 1913, Sec 1, c. 141, 37 Stat. 736.)

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SEC. 392. *Boilers and Appurtenances.*—The local inspectors shall also inspect the boilers and their appurtenances in all steam vessels before the same shall be used, and once at least in every year thereafter, and shall subject all boilers to the hydrostatic pressure. All such vessels shall comply with the following requirements, namely:

That the boilers are well made, of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat, are of proper dimensions and free from obstructions; that the spaces between and around the flues are sufficient; that flues, boilers, furnaces, safety valves, fusible plugs, low-water indicators, feed-water apparatus, gauge cocks, steam gauges, water and steam pipes connecting boilers, means of prevention of sparks and flames from fire doors, low-water gauges, means of removing mud and sediment from boilers, and all other such machinery and appurtenances thereof, are of such construction, shape, condition, arrangement, and material that the same may be safely employed in the service proposed without peril to life; and the local inspectors shall satisfy themselves by thorough examination that said requirements of law and regulations in regard thereto have been fully complied with. All boilers used on steam vessels and constructed of iron or steel plates, inspected under the provisions of section 408, shall be subjected to a hydrostatic test, in the ratio of one hundred and fifty pounds to the square inch to one hundred pounds to the square inch of the working steam power allowed. No boiler or flue pipe, nor any of the connections therewith, shall be approved, which is made, in whole or in part, of bad material, or is unsafe in its form, or dangerous from defective workmanship, age, use, or other cause. (R. S. Sec. 4418; June 19, 1886, c. 421, Sec. 14, 24 Stat. 82; Mar. 3, 1905, c. 1456, Sec. 1, 33 Stat. 1027.)

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SEC. 404. *Inspection of Ferryboats, Canal Boats, and Small Craft; Regulations; Licenses.*—The hull and boilers of every ferryboat, canal boat, yacht, or other small craft of like character, propelled by steam, shall be inspected under the provisions of this chapter. Such other provisions of law for the better security of life as may be applicable to such vessels shall, by the regulations of the board of supervising inspectors, also be required to be complied with before a certificate of inspection shall be granted, and no such vessel shall be navigated without a licensed engi-

neer and a licensed pilot: Provided, however, That in open steam launches of ten gross tons and under, one person, if duly qualified, may serve in the double capacity of pilot and engineer. All vessels of above fifteen gross tons carrying freight or passengers for hire, but not engaged in fishing as a regular business, propelled by gas, fluid, naphtha, or electric motors, shall be subject to all the provisions of this section relating to the inspection of hulls and boilers and requiring engineers and pilots, and for any violation of the provisions of this or the following chapter or sections 214 or 215 applicable to such vessels, or of rules or regulations lawfully established thereunder, and to the extent to which such provisions of law and regulations are so applicable, the said vessels, their masters, officers, and owners shall be subject to the provisions of sections 494 to 498, inclusive, relating to the imposition and enforcement of penalties and the enforcement of law. All vessels of fifteen gross tons or less propelled in whole or in part by gas, gasoline, petroleum, naphtha, fluid, or electricity, and carrying passengers for hire, shall carry one life preserver, of the sort prescribed by the regulations of the board of supervising inspectors, for every passenger carried, and no such boat while so carrying passengers shall be operated or navigated except in charge of a person duly licensed for such service by the local board of inspectors. No examination shall be required as a condition of the obtaining of such a license, and any such license shall be revoked or suspended by the local board of inspectors for misconduct, gross negligence, recklessness in navigation, intemperance, or violation of law on the part of the holder, and if revoked, the person holding such license shall be incapable of obtaining another such license for one year from the date of revocation. (R. S. Sec. 4426; Dec. 22, 1890, c. 26, 26 Stat. 692; Mar. 3, 1905, c. 1457, Sec. 4, 33 Stat. 1029; May 16, 1906, c. 2460, 34 Stat. 193.)

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SEC. 405. *Tugboats and Freight Boats.*—The hull and boiler of every tugboat, towing boat, and freight boat shall be inspected, under the provisions of this chapter; and the

inspectors shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form of workmanship, and that the safety valves, gauge cocks, low-water alarm indicators, steam gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the provisions of chapter 11 and shall be subject to the same provisions of law, as officers navigating passenger steamers. (R. S. Sec. 4427.)

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SEC. 511. *"Motor Boats" Defined; Inspection.*—The words "motorboat" where used in this chapter shall include every vessel propelled by machinery and not more than sixty-five feet in length except tugboats and towboats propelled by steam. The length shall be measured from end to end over the deck, excluding sheer: *Provided*, That the engine, boiler, or other operating machinery shall be subject to inspection by the local inspectors of steam vessels, and to their approval of the design thereof, on all said motor boats, which are more than forty feet in length, and which are propelled by machinery driven by steam. (June 9, 1910, c. 268, Sec. 1, 36 Stat. 462.)

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Title LII.—Regulation of Steam-Vessels.—Ch. I.

SEC. 4427. R. S.—The hull and boiler of every tug-boat, towing-boat, and freight-boat shall be inspected, under the provisions of this Title; and the inspectors shall see that the boilers, machinery, and appurtenances of such vessel are not dangerous in form or workmanship, and that the safety-valves, gauge-cocks, low-water alarm-indicators, steam-gauges, and fusible plugs are all attached in conformity to law; and the officers navigating such vessels shall be licensed in conformity with the provisions of this Title, and shall be subject to the same provisions of law as officers navigating passenger-steamers.

* * * * * * *

SEC. 4438. The boards of local inspectors shall license and classify the masters, chief mates, engineers, and pilots of all steam-vessels. It shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer, or pilot on any steamer, who is not licensed by the inspectors; and any one violating this section shall be liable to a penalty of one hundred dollars for each offense.

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U. S. C. A., Title 28.

SEC. 344. *(Judicial Code, Section 237, Amended.)* *Appellate Jurisdiction of Decrees of State Courts; Certiorari.*—* * *

(b) It shall be competent for the Supreme Court, by certiorari, to require that there be certified to it for review and determination, with the same power and authority and with like effect as if brought up by writ of error, any cause wherein a final judgment or decree has been rendered or passed by the highest court of a State in which a decision could be had where is drawn in question the validity of a treaty or statute of the United States; or where is drawn in question the validity of a statute of any State on the ground of its being repugnant to the Constitution, treaties, or laws of the United States; or where any title, right, privilege, or immunity is specially set up or claimed by either party under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States; and the power to review under this paragraph may be exercised as well where the Federal claim is sustained as where it is denied. Nothing in this paragraph shall be construed to limit or detract from the right to a review on a writ of error in a case where such a right is conferred by the preceding paragraph; nor shall the fact that a review on a writ of error might be obtained under the preceding paragraph be an obstacle to granting a review on certiorari under this paragraph.

* * * * * * *

IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1936

No. 552

E. PAT KELLY, as Director of the Department of Labor and Industries of the State of Washington; JAY OLINGER, as Supervisor of the Safety Division of Said Department, and HOWELL PARKER, as Deputy of Said Director under the Title, Marine Inspector.

Petitioners,

v.

STATE OF WASHINGTON on the Relation of FOSS COMPANY, INC., a Corporation; ALLMAN-HUBBLE TUGBOAT COMPANY, INC., a Corporation; BELLINGHAM TUG & BARGE CO., INC., a Corporation, *et al.* *Respondents.*

BRIEF OF PETITIONERS

G. W. HAMILTON,
Attorney General of the State of Washington,

W. A. TONER,
Assistant Attorney General of the State of Washington,

Office and Postoffice Address: Temple of Justice, Olympia, Washington

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